IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

O R D E R

Radha Kishan Sharma Vs. Union of India & others

D.B.CIVIL WRIT PETITION NO.1312/2006
UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA.

Date of Order: Sept.01,2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Kuldeep Mathur, for petitioner.
Mr.Manoj Bhandari, for respondents.

REPORTABLE BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. By way of instant petition under Article 227 of the Constitution of India, petitioner Radha Kishan challenged the order of the C.A.T., Jodhpur Bench, Jodhpur dated 23.8.2005 dismissing Original Application No.67/2005 having refused to condone the delay in Miscellaneous Application No.40/2005.

2. At the outset, it may be pointed out that the pending writ petition, petitioner Radha Kishan died on 21.7.2006 and, as such, his Legal Representatives viz; Smt.Shanti Devi (wife), Jyoti Sharma (daughter), Amit Sharma, Vishal Sharma and Rakesh Sharma (sons) have been taken on record by the order of this Court dated 1.9.2006. However, for the convenience, the deceased petitioner shall, hereinafter, be referred as petitioner.

3. The petitioner entered the services of the Railways in the year 1961 as Apprentice fireman Grade `A'. While he was working as a passenger train Driver in Loco Shed, Lalgarh, his services were terminated with effect from 2nd March, 1981 for participating in the strike. The order of termination was set aside by the order of the Tribunal dated 4.9.1992. Thus, he was reinstated by order dated 6.7.93. He was extended all the service benefits except LAP/HAP for the period he remained out of service. He stood superannuated on 29.2.2004. He made representations for the benefit LAP/HAP of the period during which he remained out of job, to be credited/granted to him. Thus, he filed the Original Application before the Tribunal in the year 2005.

4. The respondent in its reply inter alia took a plea of the Original Application being barred by limitation. Petitioner filed an

application under Section 21(3) of The Administrative Tribunals Act, 1985, hereinafter referred-to as "the Act" for condonation of delay on the ground that the matter remained pending with the respondent authorities. The Tribunal refused to condone the delay and, as such, dismissed the Original Application by the impugned order being barred by limitation.

5. We have heard learned counsel for the parties and perused the petition and annexures thereto. Learned counsel for the petitioner has made two-fold submissions. At the first instance, it is submitted that as the pensionary benefits can be claimed only on attaining the age of superannuation, as such, the limitation was to be counted from the date of superannuation and not from the date of reinstatement. In alternate, it is submitted that as the matter remained pending with the respondent authority and repeatedly, the assurance was given that the matter is pending consideration, there was sufficient ground for condonation of delay. On the other hand, learned counsel appearing for the Railway Administration has supported the judgment of the learned Tribunal.

6. We have heard learned counsel for the parties. We are of the view that the instant petition deserves to be allowed. It is true that Section 21 of the Act prohibits admission of an

application made under Section 19, unless the same is moved within one year of the order. Sub-section (3) of Section 21 of the Act gives ample power to the Tribunal to condone the delay, if the applicant satisfies the Tribunal that he had sufficient cause for not making the application in time. **However, it must be realized that there is no rule of law imposing an obligation on the Tribunal to dismiss the application on the ground of delay. The discretionary power is to be exercised more liberally in the facts and circumstances of the case. While attributing the negligence or inaction on the part of the petitioner, inaction on the part of the department must also be kept in mind.**

7. From perusal of the pleadings, we find that the petitioner did not make complaint against any order but it was against inaction on the part of the respondent authorities. At this stage, it will be convenient to read Section 21 of the Act, which reads as under:

> "**21. Limitation.-** (1) A Tribunal shall not admit an application,-
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> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case maybe, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) of sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

8. It is evident that Section 21 provides limitation of one year, in cases where final order as mentioned in Clause (a) of sub-section (2) of Sec.20 of the Act has been made in

connection with the grievance. Thus, **we are of the view that in case where complaint is not against any order but it is against inaction by the authority concerned, then Section 21 which prescribes limitation, would not be attracted, for unless an order is made, the period of limitation would not commence.** In the instant case, no order has been passed by the respondent authorities refusing the benefit of LAP/HAP. Thus, the Tribunal has committed manifest error in rejecting the Original Application on the ground of limitation. Even otherwise, in the instant case, cause of action arose only after retirement of the deceased petitioner as benefits claim became due only on superannuation. In any case, it was a fit case where the Tribunal ought to have exercised power under sub-section (3) of Section 21 of the Act by condonation of delay, taking liberal view. The Tribunal has committed manifest error in rejecting the Original Application on the ground of limitation.

9. Consequently, the Writ Petition is allowed. The order of the learned Tribunal dated 23.8.2005 is set aside. The Miscellaneous Application No.40/2005 in Original Application No.67/2005 is restored to its original number. The Tribunal is directed to decide the Original Application on merit. The parties

are directed to appear before the Tribunal on 19th September, 2006. Costs easy.

(R.P.VYAS), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS